

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-129247-09

Date:

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### LEGEND

Distributing =

Controlled 1 =

Sub 1 =

Country =

Credit Facility =

Company =

Date 1 =

Years =

a

b =

c =

Dear :

This letter responds to your letter dated June 12, 2009 requesting that we supplement our letter ruling dated May 4, 2009 (PLR-112185-09) (the "Prior Letter Ruling"). The information submitted for consideration in that letter and in later correspondence is summarized below. Capitalized terms not defined in this letter have the meanings originally assigned to them in the Prior Letter Ruling.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

The Prior Letter Ruling addresses certain U.S. federal income tax consequences of the Proposed Transaction under sections 355, 368 and certain other relevant provisions of the Internal Revenue Code. Except as modified below, the representations and material facts set forth in the Prior Letter Ruling remain in effect for purposes of this supplemental ruling letter.

### Supplemental Facts

The material facts as described in the Prior Letter Ruling are unchanged, except as stated below.

Step (ix) of the Prior Letter Ruling provided, “Controlled 1 borrows cash from an unrelated third party and distributes the Cash Amount to Distributing (the “Cash Distribution”).” Distributing now expects that the Cash Distribution will not be made.

Several of Sub 1’s disregarded subsidiaries are currently contesting certain Country taxes which have been assessed against them for Years. Controlled 1 will acquire Sub 1’s disregarded subsidiaries in step (i) of the Proposed Transaction. Distributing and Controlled 1 believe that it is unlikely that any significant amount of the contested tax will ever be required to be paid. In order to contest a tax assessment, the Country tax authority requires a taxpayer to post a bond or other suitable collateral to secure full payment of the total contested amount. Sub 1 has obtained, on its own credit and without pledging any collateral, \$a of such bonds. However, Sub 1 may be required to pledge some of its assets as collateral in the future in order to maintain such bonds.

Moreover, an additional \$b of bonds will be required to secure the remaining portion of the assessment. Controlled 1 has been unable to obtain the \$b of bonds without being required to pledge some of its assets as collateral.

Controlled 1 intends to enter into the Credit Facility immediately before the External Spin-off. Distributing and Controlled 1 expect that the lenders under the Credit Facility will also require Controlled 1 to pledge some or all of its assets as collateral. Because the terms of the Credit Facility may preclude Controlled 1 and its subsidiaries from pledging any assets as collateral for the bonds to maintain the tax contest with the Country tax authority, as an alternative to such collateral, Distributing will provide a guaranty (which may take the form of a Distributing indemnity or a letter of credit, surety bond or other similar financial instrument issued by any third party for the account of Distributing) for such bonds following the External Spin-off (the “Country Tax Guaranty”).

Distributing also presently provides performance guaranties (the “Performance Guaranties” and together with the Country Tax Guaranty, the “Distributing Guaranty”) with respect to certain arrangements between Sub 1’s disregarded entities and Company. The financial cap on the Performance Guaranties is \$c. The Performance Guaranties are expected to expire on Date 1.

Distributing will have the right of indemnification against Controlled 1 with respect to the Distributing Guaranty.

### Representation

The following representation is made in connection with this supplemental ruling letter:

Distributing and Controlled 1 do not expect that Distributing will be required to make any payments under the Distributing Guaranty following the date of the External Spin-off.

### Rulings

Based solely on the information submitted and the representation set forth above as well as the information and representations submitted with the Prior Letter Ruling, we rule as follows:

- (1) The Supplemental Facts submitted will not adversely affect the Prior Letter Ruling, which, as modified hereby, will remain in full force and effect.
- (2) Ruling # 10 in the Prior Letter Ruling is no longer effective.

### Caveats

No opinion is expressed about the tax treatment of the Supplemental Facts or the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Supplemental Facts or the Proposed Transaction that are not specifically covered by the above rulings and the rulings contained in our Prior Rulings.

No opinion is expressed about the tax treatment of the Supplemental Facts or the proposed transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the proposed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the proposed transaction satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)); or (iii) whether the proposed transaction is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

### Procedural Statements

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved in the Proposed Transaction for the taxable year in which the Proposed Transaction is completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Richard M. Heinecke  
Assistant to the Branch Chief, Branch 6  
Associate Chief Counsel (Corporate)